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Law, Literature, Theatre: The Fiction of Common Judgment

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Law *and* literature, law *and* theatre: it is this '*and*' that constitutes the focus of our research. This process of linking two, *a priori* unrelated disciplines, has a short but double history. Two different lines of thought on the relationship between law and literature, born on opposite sides of the Atlantic, have in recent years started to join up.

More than 30 years ago, mostly in the USA and Canada, professional jurists (Richard Weisberg, amongst others) began to use their legal background as a starting point to compare law and literature, analysing how law as a discipline is closely linked to literary fiction. This line of criticism, undertaken by jurists using literature, also outlined a corpus of textual references: a canon that included Kafka, Melville, Camus, Dostoyevsky, and even Shakespeare. In so doing, it tried to show how law and literature had the common aim of provoking (preferably positive) reflection on all the big philosophical and sociological questions, in order to understand and perhaps even attempt to resolve them. The discipline 'law and literature' was initially envisaged as a more effective way of teaching law: a more lively, more seductive teaching method, that grappled with the complex phenomena present in literary fiction, and was more relevant to students' own experience. Whilst studying the two areas in combination allows us to understand the questions that law and literature pose themselves and each other, it also reveals how law *and* literature, *together*, can respond to the difficult questions that the world continually, dramatically, poses itself. This viewpoint, led by jurists with some form of literary training, who linked the two disciplines from a legal point of view, was mainly adopted in northern Europe (the United Kingdom, Sweden, Germany, Holland etc). Thanks to increasing numbers of well-trained researchers both in the UK and across the world, Shakespeare quickly became a source of extraordinary cases, rich enough to provide material for numerous articles on law and literature. At the same time the reference corpus was in a state of continual expansion, with contemporary literature receiving particular attention.

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Finally, law itself had a significant impact on this modern literature, and on contemporary theatre, cinema and visual arts, creating a state of constant reflection.

At the same time, in Holland, Italy, France, and even sometimes in England (and indeed, in other European countries, and in the USA with Howard Bloch's *Medieval French Literature and Law*,[1] a complementary but opposite phenomenon was unfolding. Here, it was not jurists who drove the movement, and the scientific approach had nothing to do with a pedagogical practice designed to make law more comprehensible through the use of literature. This time, literary scholars and historians, historians of art, of cinema and of the theatre, and even philosophers, began from the standpoint of their own disciplines (generally from literature and more especially from the theatre) to show how the structure of so many literary fictions is based on a precise and documented consideration of legal fictions. They also demonstrated how art finds the cracks in the edifice of the law, worming its way into the gaps to produce a rigorous *critical* judgment on both law and the world. Furthermore, since the early adopters of this perspective were both literary scholars and historians, often academics working on the medieval and early modern period, they were able immediately to understand to what extent the study of social phenomena through literary fictions could make use of legal knowledge.

In some senses, this critical perspective, particularly evident from the 1990s onwards, came out of European and American historical studies based on juridical and judicial questions,[2] which integrated the artistic and literary object as a central element of their reflection. In other words, law, in its most basic state, relies on the construction of an '*as if*'; on necessary fictions that produce the coherence of a set point of view and create order in society. Literature, then, beginning from the *as if* of law, borrows legal fictions and brings them to life, drawing them into question and giving those they address (readers and spectators) a space for reflection, and doubt. Both fields, then, practise the art of *as if*, of distancing and fictionalisation, in order to produce an effective and possible truth, which brings together citizens, readers or spectators who agree upon the effectiveness of this truth. We need to *pretend*, and to admit the pretence, just as we need to mediate the real to prevent it being ugly, savage and violent. Except the *as if* of the law allows man to institute legal fictions that citizens accept as principles of certitude, designed to allow society to function, whereas artistic and literary *as if*s most often serve to destabilise certainty, particularly legal certainty, and create fictions that are in their essence uncertain. In this framework, law and literature do not work together. They do not necessarily combine to ensure the functioning of social, political, philosophical and legal systems, because literature and art by their nature aim to illustrate the weak points of the law, making them visible to all. Rather than proposing a possible resolution, art serves to bring

1 University of California Press, 1977.

2 Natalie Zemon-Davis, *The Return of Martin Guerre* (Harvard College, 1983); Carlo Guinzburg's work on sorcery, etc.

the artistic and legal fields into contradiction through the law's application to precise cases, assuming the right to judge the law, just as it assumes the right to judge the world, and let the world judge.

If these two critical approaches are different and even opposed, they are not necessarily irreconcilable, because they correspond, in fact, to the two functions of art and literature: first, the creation of links, with the aim of achieving a sort of harmony; and second, a critical function, which draws into question social, aesthetic and political links, and even the very possibility of harmony, in the name of the contradictions it observes and develops. The fact that the link between art and society is first addressed by jurists is not in itself surprising. However, in studying how art—even when it presents itself as civic-minded and the producer of harmony—works through the law, by playing with the law, and by examining how rules do or do not apply in certain cases, jurist-critics understand how the relationship between art and the law can be both conflictual and immensely thought-provoking. It is here that their perspective overlaps with that of the historians and literary scholars.

However, I do not want the 'critical' value of art in relation to the law to be misunderstood. The aim of this study's theoretical and critical practice is not to produce what would be a very basic discourse, simply describing the satire of legal practice (judges and lawyers) created by literature. Rather, it is a question of analysing the manner in which literary fiction, both in the fictions it creates and in the practices it espouses, penetrates the gaps or even the fault lines of the law. Neither do I suggest that literature and art aim at breaking down any sort of juridical fortress built of hieratic dogma. On the contrary, literature insinuates itself into the law; becomes familiar with it and works on it from the inside (authors, at least until the twentieth century, were often themselves lawyers or at least students of law) in order to complicate and problematise it, using it to provoke reflection, rather than aiming to destroy it. Often, literature and art effectively reverse the judicial process by following its structure: by reflecting the functions of the trial, and borrowing its modes, its ideas and its vocabulary. If law and the judicial process aim to move from the least to the most known, from uncertainty to certainty, then art pursues (in all senses of the term, including the legal one) this process of examination and elucidation in order to draw it into doubt and to overturn it.

In some senses, then, literature invades the domain of the law, and usurps a number of its functions. Furthermore, this is a critical interaction, since it aims to shed light on the internal and external contradictions of the law itself. Conversely, literature can also consolidate the law, using it as a model to restore social links and harmony, such as in the classic detective novel or film: in this situation, its structure mimics that of the investigation of a legal case. However, very generally, literature and art search out the moments at which the law, in its process of elucidation and its passage towards relative but effective certitude, hesitates, vacillates, and is lost or struck by ambiguity. And at the moment when the law is pronounced, when judgment is passed, art seems to take up the

case once more, making it more uncertain and ever more ambiguous, in order that its audience becomes the judge, forced to express itself in a state of uncertainty and discomfort. The readers or spectators, as if they were the guilty parties, the defendants, the victims or the witnesses in a judicial machine determined to produce an apparently certain judgment (or in any case, to produce a truth accepted as judicially performed), become in their turn judges of the uncertainty of the case, cultivators of this uncertainty, judges forced to doubt because their judgment has no other practice than that exercised in literary and artistic fictions. In other words, they are mock judges.

Therefore if literature, as we have stated, often allows legal theoreticians, like historians, the chance of better understanding and defining their own practice, this is precisely because literature itself has a very specific relationship with the law. A relationship of similitude, certainly, since they deal with the same world, the same society, the same themes: marriage, inheritance, social links and their breakdown; the same 'subjects': real or fictional in law, fictional or apparently real in literature; and are constructed in continual relationship to the past, to successively produced texts that respond to one another according to the evolutionary norms in a given field. But literature and law also have a relationship of opposition, since literature displaces the law, plays with it and uses fiction to draw it onto ground that otherwise it could not or would not consider. Literature is spectacle, and thus it unveils, plays, evokes the abstract foundations of the ideas to which it gives concrete expression, exemplifies the internal contradictions of the law, dramatises the contradictions between the law and social practices, underlines that legal fictions are also, literally, fictions, and that they have a historical, and not transcendental source, and most importantly confronts legal rules and certainties outside the terrain of the law. But it also takes into account legal procedures, sometimes even mimicking them. It uses the formality of legal cases as a starting point, but allows them to escape from this framework, proposing alternative interpretations, outside the law being referenced. Finally, if law and judgment aim to provide a final, clear and unequivocal ruling, in concrete cases—whether real or fictional—after having set out the principles and examined the circumstances, literature often only *appears* to pass judgment—if it even does so at all. In other words, and this is its strength, it develops an interpretative polyvocality, which can undermine any verdict which is established. If the job of the judge is not necessarily to know whether a certain complainant has the right to win his trial, but rather to examine whether the law allows him to do so, within certain rules, and within the framework of a particular competence, literature moves beyond this framework, asking instead what is 'just', and therefore who ought to win. If the judgment of law looks for a real verdict from a regulated interpretative enterprise, literature can suspend the verdict, leave it to the reader or spectator, make it sufficiently difficult to formulate, or present it as ambiguous in order that readers doubt the verdict, debate it, or consider it iniquitous.

And so, in observing how law and its practice are really anchored in the dramaturgy and the narrativity of texts, the challenge is not to show that literature is the mirror of its time, but rather to understand the ways in which it intervenes not only in social, political and economic processes, but also at the centre of the judicial field. In doing so, literature reflects on the social judicial phenomenon and on its practices, questioning the rules and the fictions of the law—in other words, the tools of the law itself—to the point at which fictional works force a reflection on the law as an object of thought. And by adapting legal procedures aesthetically (and therefore to their profit), by twisting them to fit their dramaturgy and narrative structures, literary fictions place the law at the centre of their practice, at the same time as they overturn it. Conversely, the judicial exercise employs literary figures and procedures to express its cases. The link between law and literature is therefore not necessarily conflictual, and is even sometimes vitally constitutive to one or both fields.

If literature, then, proceeds by a process of aesthetic rewriting, by reconsidering the rules, cases, and practices of the law in a new context, it thereby intervenes in the social field and comments upon the law: on questions of marriage and inheritance (in comedy), on questions of crime and public or private offences (in tragic histories and tragedy), and on questions of political or penal laws (in tragedy and, later, on all levels in the novel). Literature is therefore able to examine laws in a critical, ironic, aesthetic manner, using a fictional mode to pose questions that the law does not resolve, or only seems to have resolved. This is where literature plays a vital role: in lifting the veil on the law through the examination of concrete cases and the values they uphold, in using fiction to expose the contradictions inherent to the law, and in provoking crises that directly draw into question the most fundamental judicial rules. The most important thing, then, is to show that laws are *interpretable*, by creating heroes, and by constructing plots designed to draw the law into debate.

In its direct and concrete representation of how laws are put into practice in the lives of its characters and in its fictional world, literature interprets, and therefore suggests that laws can be heterogeneous and contradictory; that they have a historical, and not necessarily transcendental origin, and that they too are based on a pre-existing fiction, in other words on an agreement or contract between the parties to whom they apply. Laws, in fact, appear to be ripe for discussion, and merely relative because they can be so easily accepted, transgressed or overturned. Whilst the principle of the law is that it should function as a sort of social cement, literature dramatises the simple fact that the cohesion it provides is not necessarily effective, because laws themselves are heterogeneous or conflictual—that, for example, under the *Ancien Régime*, they are the result of canonical rights, custom, or monarchic law. The plots of plays and novels never stop insisting upon the fact that this apparent cohesion can disintegrate, that it can be just as artificial as the principles upon which the laws are based, and that it is possible to learn how to

manoeuvre the law by playing on its heterogeneity and artificiality. By examining the circumstances in the cases that literature produces, by evaluating the faults, errors and behaviour of its fictional characters, by drawing into question their different loyalties and positionings, literature pulls the law out of its regulated practice and its theoretical field, in order to open it to other social or subjective considerations. By revealing the historical nature of these supposed absolutes and the non-permanence and the instability of the values at the root of the law, by analysing law's roots in history, custom and time, literary fiction makes the variations in philosophical thought aesthetically perceptible through a representation of the plasticity of its doctrines. Fiction, therefore, relativises the law.

However, the reflective distance introduced by literature, the aesthetic mode of commenting upon and interpreting the laws, does not necessarily induce radical doubt either with regard to the law itself, or with regard to social rules. Very often, even as a general rule, literary fiction gives itself the task of ending the crisis that it has provoked; of replacing the veil that it has raised upon law and its roots. It is as if the very functioning of literature provokes a sort of discomfiture: literature must dramatise the struggles and the discrepancies of the law, in order to interest its reader and spectator, but it must equally try to curb this discomfiture. This is a function of the search for political and social harmony that literature and theatre enact. By restoring, *in extremis*, in the fifth act or at the end of a story, the homogeneity of the law, or another homogeneity based on another *as if*, and a possible social consensus on canonical value; by using the traditional dynamic of comedy and the novel (the happy ending, or in any case an ending that is conventional from a judicial point of view), literature often proposes that after the crisis, a consensus is reborn. Whilst this might be a new consensus—projective, utopian or critical—it is a social, legal, political and familial consensus that is able to stand up to the fictional disorder that literature had previously created.

Literature is not necessarily disruptive or subversive here, because it does not present itself as a discipline that proposes a new truth. Rather, it introduces a speculative, critical doubt about the 'just', or about *a* 'just' that is not limited by the borders of determined law. We can therefore identify a relationship of complicity between the two domains; a sort of parallelism or alliance in the very fact that they have in common at least a part of their rhetoric, their procedure and their qualification of cases. This parallel comes from their common need to convince outsiders of the guilt or innocence of a cause: both disciplines deal with what governs human behaviour, and with human behaviour itself as it is subject to social rules. But we can also see, in literature's appropriation of judicial questions and legal cases, an effect of proposition, even a freer sort of jurisprudence that takes into account the contradictions inherent in accepted norms, and allows them to be questioned.

And so operating within its limits, which are those of all art—that is, in a distanced, mock-reality, without immediate effect—literature uses the law to declare both its freedom and its legitimacy, and allows itself to propose 'just' solutions to its observations

and its definition of human behaviour. By the distance that its writing creates, even with regard to the legal profession, and with regard to moral, religious and political values, literary fiction grants itself a stronger autonomy than other powers, by moving the limits of legitimacy to its own advantage.

THE PRIVATE CONVICTION OF THE READER-JUDGE

Literature, the novel and comedy are, like the law, represented by sets of cases that illustrate the difficulty of living as an individual, at the mercy of others and at the mercy of circumstance. Each individual, responsible character is required to establish his or her own fictional pathway within a narrative, or a plot, in a way that is both credible and probable. Each pathway, strewn with faults and errors, is then judged by the authority who reads this fiction, guided by a narrator who pleads for conviction or acquittal. This is the principle, already described by Richard Weisberg, of the author-lawyer, to which I would add the figure of the reader-judge. The reader judges not only according to legal procedures, mimicked and borrowed in the text itself, but also according to his heart, his soul, his own will; that is, based on his *intime conviction* (a sort of private, individual belief) of what is 'just', and his version of 'equity' (whether in the Anglo-Saxon or Aristotelian sense).[3] Through this system of private conviction based on a 'justice' that proclaims itself to be universal (or metaphysical); an idea of equity, and the notion of a 'just' that is individually, collectively and universally conceived, that draws in feeling, intuition, and social and ideological concepts—with these tools literature is able to go beyond the capacities of the law, awakening in its readers and spectators a series of individual faculties which are felt and assumed as universal, but which in fact allow for an infinite freedom of interpretation. In opposition to the mechanical and/or rational judgment of facts that it mimics, literature installs 'another' judge, who takes facts into account, and who considers them not only with regard to the law, but also with regard to the idea that there is a 'just'; with regard to his individual conception of justice. The reader and spectator are also there to cast doubt on the evidence put in front of them and employed by the author, to consider the different witness statements, to evaluate how the

3 This is not to say, however, that the idea of the 'intime conviction' was so firmly established in French law under the *Ancien Régime* that it actually came to replace it: the fairly rigid French system of proof—tempered by the presence of several judges, by witness statements, by their alliances or disputes, or by the idea of the irrefutable nature of binding proof, for example—is based on procedure and the work of great men, and is often discussed and represented in literary fiction. But we also know that this codified system was put in opposition to the English concept of 'equity', based on *intime conviction*, which judges individuals more than facts. In order that a French version of this notion could appear in 1790, the law relating to the individual had to be viewed in a new way. It was also necessary that the concept of the 'intime' should have a greater institutional significance, and that 'conviction' should have a recognised value: the 18th century took it upon itself to legitimise both.

law generally weighs upon such situations. In other words, their role is, through the text or the performance, to play with the word of the law, inserting their own words and their own judgments, via the text constructed by the author: using the law, but also in some ways working against it.

Literature, then, uses the law as a basis to construct projective spaces in which the imagination can explore and surpass judicial norms, play upon their contradictions, and represent situations that go beyond the judicial framework. This is the real interest in working on the relationship between law and literature, and in exploring the behaviour of literary fictions when compared to another sort of fiction: the legal fictions on which the law is based. Literature introduces play in order to interest its readers, and pose them important questions. It inveigles itself into legal games: just as we say there is inter*play* between the different parts of a machine, there is a type of play between the different elements of legal practice. The intervention of literature adds a third level of play, analysing and revealing the discrepancies, the gaps and the uncertainty in the law itself. And finally, by *play*ing out these faults before an audience of readers or spectators, literature draws them into the game: it provokes an autonomous, individual judgment, by a modern subject, of a case represented in fiction by the literary object. This in turn gives birth to the idea of a relative, sometimes uncertain judgment, often shot through with doubt, and rooted in an idea of the 'just' that each period, each author, and most particularly each reader, is charged with constructing for himself. It is in the context of this critical and productive relationship that literature takes hold of the law, rarely in order to comfort it, and most often to bring it, quite literally, into question.

LAW AND THEATRE: FROM CRITICISM TO THE PRODUCTION OF IDEAS

I would now like to go one step further in this discussion of the alternative, substitutive, or at least displaced and critical system that literature represents in its interaction with the law. We will now consider literature not only in terms of the reading-pact it produces, in which the reader is given the freedom to judge, but also in terms of the status of spectator that it implies for its public of real, living readers. It is through the notions that we have tried to construct here—complicity, pathos, sympathy/empathy, its apparent opposite, distance—and even more importantly, through the process of *theatrical appearance*, and thanks to ideas borrowed from the field of the law, that I hope to arrive at some sort of definition. This will not be a definition of what the theatre should be, nor of the very essence of theatre itself; rather it will define a sort of mechanism that, over time, repeats itself, adjusts to its audience, and changes subtly, in order that a complex, contradictory, and always heterogeneous identity should appear in the theatre, and take its place in the aesthetic and social space.

From here, it will then be possible to reflect historically and horizontally on the fact that the theatre has not only gradually and systematically constructed a representative dramatic art based on ghostly illusion, but has also simultaneously come to produce a performance, a figurative act, the visible manifestation of the collective experience of a certain group of individuals (the artists and the audience) who create a temporal co-production based on more-or-less mediated facts. Within this production, the real and the fictional, with a tangible porosity, oppose one another, brush against each other, and mingle together. It is therefore apparent that the theatre has always offered the chance to create, or to recreate, an illusion that is no longer *dramatic*, but which instead invites participation, endangering the very place of its production, but at the same time finding ways to avoid this danger through aesthetic and disciplinary artifice.

Theatre, then, can be defined as a representation *and* a performance, a *play-event*, a place of aesthetic and social interaction which explores the dangers of play itself: a game of representation, in essence, whose function and whose individual and collective mechanisms consist of a constant series of representative interactions. This is a political, aesthetic, legal and more or less mimetic performance, organised within the framework of a present event. Theatre thus becomes an event which is profoundly social and politically complex, rather than didactic, or indeed, its opposite: a self-reflexive, purely aesthetic creation. This is because theatre uses all possible forms of questioning (images, words, gestures, violent actions, etc) in order to be *judged* both in the context of the aesthetic protocols that it sets up, and in the context of the *polis* that it calls together. In the world of the theatre, justice comes face to face with 'the just', as it can be contradictorily or paradoxically defined by the heterogeneous mass of spectators and practitioners. In the world of performance in general, whether dramatic or epic, theatre creates 'play-events', spaces of thought and feeling which allow those participating in this co-presence to produce a judgment, which may or may not be applicable to the world from which they came, and to which they will return after the performance, more or less changed. Theatre itself speaks through the actors playing their roles. However, at the same time it addresses the spectators by putting them in contact with the actors, and brings the spectators into contact with one another. And these contacts are reciprocal, shared and contradictory. It works like a field of heterogeneous forces, and at its very centre, the performance (and at the centre of this centre, the stage), it creates echoes of the problematic heterogeneity of the world that lies just beyond its edges.

Why do people go to the theatre? First and foremost to come together, in the hope of enjoying themselves, and of thinking together and individually. In this sense, it is a sort of exchange: spectators pay so that their time will be occupied by watching the participants, so that they will gain pleasure and the opportunity for reflection, and so that, equally, this time will be occupied by seeing other spectators in the same place. In other words, the audience expects something that corresponds to their various reasons for attending (company, entertainment, food for thought), but that at the same time has the

capacity to surprise them, and is not the exact replica of a preceding performance. The audience wants to see and hear something which is similar, which is the same, but which is also different, and surprising. To be, to speak, to think in a codified place, similar to what they know, but also to spend time in a place that is somehow unknown. It wants repetition, complicity, fulfilled expectations, but also surprise: the presence, then, of elements which do not totally conform to that code; that transgress it, overturn it, or modify it slightly.

We know that this is the pleasure of going to the theatre, just as much as the specific aesthetic event that is offered. There is, then, in the ephemeral present of theatrical experience, in performance and in the theatrical 'séance'[4] a sort of re-enactment of the everyday, and the playing of a game that works in relationship to this everyday: a linking phenomenon, and a game that critics play with this link, both within this place and within its institutionalisation in the theatre.

How then can we describe and name this whole, using the words of theatrical aesthetics and the words of the law? How can we express its movement without resorting to the notion of 'sharing'? How can we retain the image of a field of contradictory forces, and of a necessary contradiction to the materialisation of theatre, while still taking into account the ephemeral co-presence of the *apparatus* and their *relationship*? Perhaps by returning once again to the phenomenon at work in the theatrical scene, which we might call 'appearance'.

In a theatrical scene, all the participants simultaneously *appear* before one another, through a series of heterogeneous figurations and different postures. The actors, the spectators, the practitioners, and also the characters and performers, appear both before one another, and before their interlocutors, in order to produce an event, a performance and a fiction which are the result of the multiple presence of these multiple 'co-authors'. This representation of multiple appearances gives way to multiple judgments; the theatrical space lays bare the necessity of social ties as well as the necessity of disturbing or challenging them. This is not meant as a reference to Lyotard's definition in *Au juste*: it is neither a mere 'exposition' (his definition of ancient theatre)[5], nor a 'donation' (his definition of modern theatre)[6] but a putting into practice and into play of both the *apparatus* and the participating individuals. They are brought into the same space and, aware of their presence(s) and co-presence, they are induced to reflect on that very presence. The theatre is experienced as immediate appearance, because it occurs in the moment, in the ephemeral instant of the session, with all the risks associated with the heterogeneity of the relationships that are at stake. Yet it is also a mediated appearance,

4 For a definition of 'séance', see Christian Biet and Christophe Triau, *Qu'est-ce que le théâtre?*, coll 'Folio essais inédit' (Gallimard, 2006).

5 Jean-François Lyotard and Jean-Loupe Thébaud, *Au juste: conversations* (Christian Bourgois, 1979).

6 Not exactly in the sense used by Jean-Luc Nancy either, though the concept is not devoid of interest in a reflection on theatrical aesthetics.

because within the scene, beyond the basic event of the gathering, another event is being performed or represented: because this is 'art'.

That is why the theatrical *appearance*,[7] as defined here, is not only about one individual or a group of individuals representing a notion or an entity before other individuals or groups of individuals who are in charge of judging them (which can be an aim for the theatre, but only one amongst others). Rather it is a reciprocal, diffracted and heterogeneous relationship built around a conscious (formal, hence necessarily semantic) proposal, included in a power struggle isolated in a time and place in the *polis* (the theatrical session) and which, by necessity, is not meant to dictate a position or a single solution. Using an aesthetic proposal as a starting point, this *theatrical and judicial appearance* produces *simultaneously*, *contradictorily* and *paradoxically*, an heterogeneity of judgments—this fear-inducing heterogeneity. And in holding this aim, just as it is an aesthetic operation, practical and represented by moving bodies, by objects, sounds and breaths that often support a text, it is also a specific, political operation in the space where it takes place.

The theatrical appearance can thus be seen as an aesthetic-political operation in that it represents for all present a social event akin to a gathering and necessarily pertaining to the political. The political operation does not necessarily mean then that the theatre is a blatant, political act or action; only that it is an operation of the political, a way of accomplishing or actualising the political through its very presence in the *polis*. It is not about the theatre carrying a specific message, but more about a process of materialisation, taking place before an assembly of individuals who see, meet and exchange with one another (to varying degrees of intensity). They are connected or not connected around common values and references, and their interaction is pervaded with contradictions and tensions.

To phrase it better, the theatre places the representations it offers (and above all its own representation) into the political, into the *polis*, by depicting the zones and questions that, for example, politics and the law merely stumble upon by accident or ignore entirely. Furthermore, the question of the political in the theatre or of theatre as a political game, designating and depicting the appearance of all before all, does not imply that the theatre only *witnesses*, because, as acting or performance, it has a practical impact; it does

7 The term *appearance* is to be understood in the sense of a 'court appearance' and also in the sense of 'theatrical appearance'. The French term *comparution* refers principally to a judicial context and is therefore used as a means of importing the judicial question into the theatrical arena. Here we take up a notion that Jean-Christophe Bailly and Jean-Luc Nancy use in an altogether different context, and adapt it to our own discourse. See Jean Christophe Bailly and Jean-Luc Nancy, *La comparution: politique à venir* (Christian Bourgois, 1991). A first draft of this theoretical essay was published in French, with Christophe Triau, in 'La comparution théâtrale' (2008) 88 *Tangence* 29. See Christian Biet, 'Towards a Dramaturgy of *Appearance*. An Aesthetic and Political Understanding of the Theatrical Event as *Session*' (2009) 14(3) *Performance Research* 102; Christian Biet, 'Séance, assemblée, médiation spectaculaire et comparution théâtrale' in *La permission et la sanction: théories légales et pratiques du théâtre (1400–1600)* (Rodopi, 2010).

something to or in the world thanks to the co-presence of its *apparatus*. Within the aesthetic-political proposals and productions themselves at work, it enacts something pertaining to the process of judgment. Through this process, it thus complicates the data it introduces in an ephemeral presence before and with co-present individuals. In so doing, it brings life to these judgments, gives them a body and flesh that is not a mere image.

A study of this nature consists not only in observing, analysing and interpreting the conflictual or complementary links between art (here, literature and theatre) and law, but also in producing, via the question of judgment, a series of critical notions applicable both in the world of the judiciary, and in the world of theatre and aesthetics. This *ethico-political operation of appearance* has allowed us to consider the legal 'appearance'—whether in its incarnation in a tribunal, or in the demonstration of authority entailed in pronouncing a sentence, which is then overturned or displaced in the aesthetic field. In the same way, having theorised the theatrical 'appearance', we can make a consistent argument about the theatre as an aesthetic *and* judicial location, which involves the presence of varied and contradictory individuals, and also allows for a generalised 'co-presence'. The theatrical scene, in which everything appears, opens up the possibility of mock, heterogeneous judgments, without any direct effect (the opposite of the law). With no other direct effect than that of consciously sharing a co-presence, and complicating it, the theatrical appearance—distinct in this sense from an appearance before a jury—is therefore totally free. The jury, too, is made to *appear*; the game is made complex, every relationship and every link between the assembled individuals is brought into question. Consequently, this complex game can be thought of not only as a process based upon the acceptance of codes, and on complicity, or on the transgression of this complicity; but rather as a process of democratic and heterogeneous judgment, born out of the representation of exceptional behaviour.